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03/09/2004

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07/17/2009

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EXAMINER

RAMANA, ANURADHA

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 11, 2009 has been entered.

### ***Claim Rejections - 35 USC § 102***

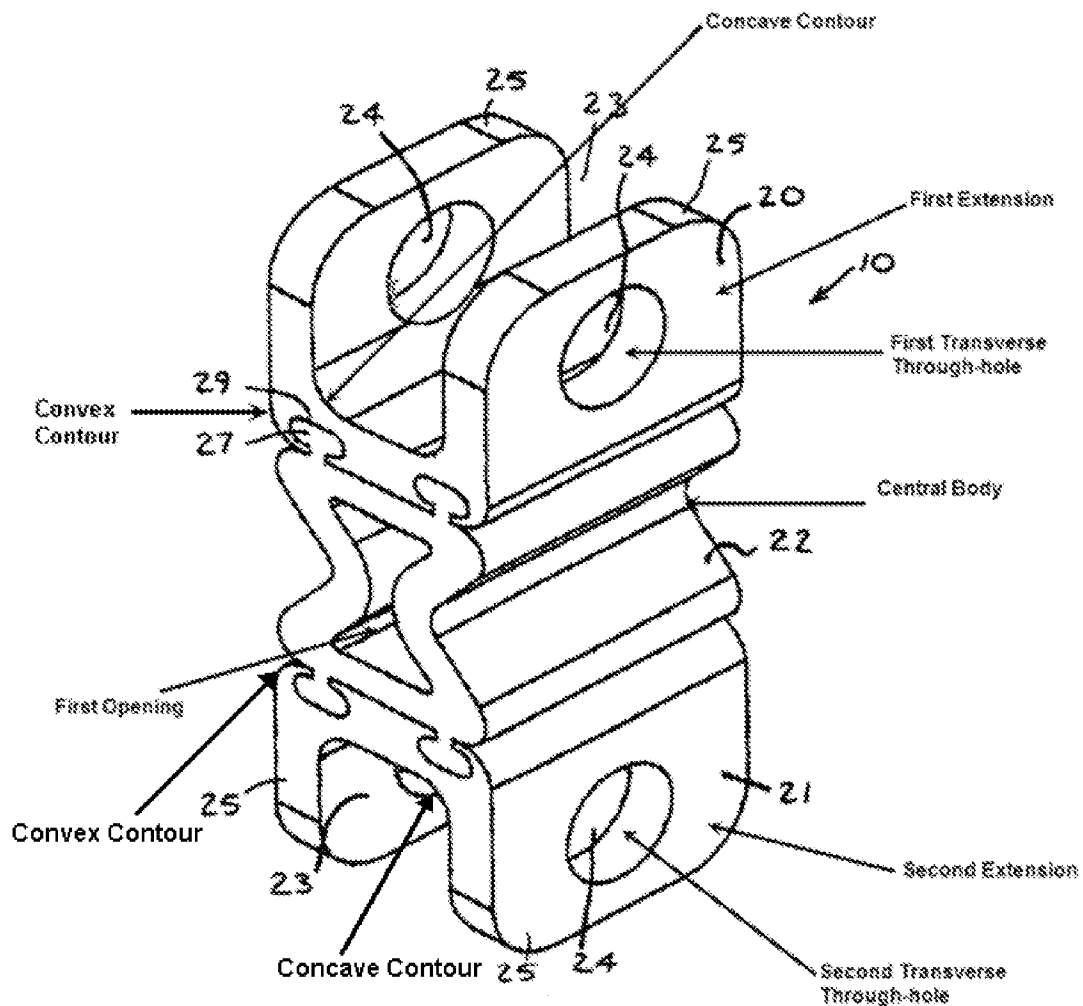
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 28-30, 44 and 46-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Arnin et al. (US 7,011,685).

Arnin et al. disclose an interspinous implant including a central elastomeric body 22, a first extension 20, a second extension 21, and a rivet passing through a hole 24 in the first extension and thus having a first portion integral with the extension and a rivet passing through a hole 24 in the second extension (Fig. 1C, col. 3, lines 42-67 and col. 4, lines 1-36). Arnin et al. disclose the extensions to be made of titanium. It is noted that a rivet inherently has a male part or pin and a female part or pin. See marked up Fig. 1C from Arnin et al. on the following page.



### ***Response to Arguments***

Applicant's arguments filed on May 11, 2009 have been fully considered.

Applicant's arguments with respect to the rejections under 35 USC 102(e) over Arnin et al. are not persuasive for the following reasons.

Arnin et al. clearly disclose the first extension to have an outermost surface with a concave contour and the second extension to have an outermost surface with a concave contour as illustrated in the marked up figure provided in this action.

### ***Allowable Subject Matter***

Claims 31-33, 35 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached at (571) 272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3775

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR  
July 16, 2009

/Anu Ramana/  
Primary Examiner, Art Unit 3775